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Kelly Toys Holdings, LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KELLY TOYS HOLDINGS, LLC,

Plaintiff

v.

BAODING MI XIAOMEI TRADING CO., LTD.,
DONGGUAN GAODENBAO TOYS CO., LTD.,
DONGGUAN JOY SUM TOYS MANUFACTURING
CO.,LTD., DONGGUAN MITO TECHNOLOGY CO.,
LTD., DONGGUAN NANSEN PLUSH TOYS CO.,
LTD., DONGGUAN QINGYU ELECTRONIC
TECHNOLOGY CO., LTD., DONGGUAN
WOODFIELD BABY PRODUCTS COMPANY
LIMITED, DONGGUAN YIKANG PLUSH TOYS CO.,
LTD., FOREIGNERS STORE, FOSHAN NALU
APPAREL CO., LTD., GUANGDONG JINYANG
CHILDREN'S PRODUCTS INDUSTRIAL CO., LTD.,
GUANGZHOU EPSILON IMPORT AND EXPORT
CO., LTD., GUANGZHOU HAPPY ISLAND TOYS
CO., LTD., HIGH HOPE INTERNATIONAL GROUP
JIANGSU CHAMPION HOLDINGS LTD., HUNAN
UYEAH INTERNATIONAL TRADE CO., LTD.,
JINHUA HAIRONG IMPORT AND EXPORT CO.,
LTD., LIANYUNGANG HONGWEN TOYS CO., LTD.,
LONG WAY WOODEN TOYS & CRAFTS CO., LTD.,
NANJING UNICO INTERNATIONAL TRADE CO.,
LTD., NANNING HUAHANG YIGOU E-COMMERCE

**CIVIL ACTION No.
21-cv-6029 (LGS)**

~~[AMENDED PROPOSED]~~
**FINAL DEFAULT
JUDGMENT AND
PERMANENT INJUNCTION
ORDER**

CO., LTD., NANTONG OPERA IMP.& EXP. CO., LTD., NINGBO YIMA IMPORT AND EXPORT CO., LTD., PEACEFUL (GUANGZHOU) IMPORT AND EXPORT CO., LTD., QINGDAO AODING INDUSTRY AND TRADE CO., LTD., QINGDAO HONGWUYUE INDUSTRY AND TRADE CO., LTD., QINGDAO QUNZE TOYS CO., LTD., QUANZHOU GUANGHE MINGLIANG TRADING CO., LTD., QUANZHOU HUAERFEIYA ELECTRONIC COMMERCE CO., LTD., SALVATORE STORE, SHANDONG PEACH TOWN TOYS & GIFTS CO., LTD., SHANGHAI KEDI TOYS CO., LTD., SHANGHAI NOVA INDUSTRIAL CO., LTD., SHANGHAI QIANJIU TRADING CO., LTD., SHENZHEN HUASHUNCHANG TOYS CO., LTD., SHENZHEN LEVIN PLUSH TOYS CO., LTD., SHENZHEN MINA TECHNOLOGY CO., LTD., SHIJIAZHANG QUNZE TRADING CO., LTD., SUZHOU MYGREEN TEXTILES CO., LTD., THE ROAD TO HAPPINESS STORE, TOY ENCYCLOPEDIA STORE, VANCE STORE, YANCHENG LANYI INTERNATIONAL TRADING CO., LTD., YANCHENG TRUST TOYS CO., LTD., YANGZHOU CAISHENG HANDICRAFT PRODUCT CO., LTD., YANGZHOU DIXIN TOY STORE, YANGZHOU HAITONG TEXTILE PRODUCTS CO., LTD., YANGZHOU HOBBY IMPORT & EXPORT CO., LTD., YANGZHOU JIJIA TOYS CO., LTD., YANGZHOU LERDDY TOYS & GIFTS CO., LTD., YANGZHOU MARISA TOY GIFTS CO., LTD., YANGZHOU RONGJIANG LIANGPIN TOY CO., LTD., YANGZHOU TAY CHAIN IMPORT & EXPORT CO., LTD., YANGZHOU YIJIANG PRODUCT TRADING CO., LTD., YANGZHOU YOUPU HOUSEHOLD PRODUCTS CO., LTD., YANGZHOU YUANJIA CRAFTS CO., LTD., YANGZHOU YURUI HOUSEHOLD PRODUCTS CO., LTD., YIWU GALORE ACCESSORIES CO., LTD., YIWU JIANYU E-COMMERCE FIRM, YIWU JINBIAO TEXTILE CO., LTD., YIWU LENORA TRADING CO., LTD., YIWU NIULUO TRADE FIRM, YIWU QUANFA IMPORT & EXPORT COMPANY LIMITED, YIWU YIZHOU TRADING CO., LTD. and YIWU ZHENGZHI QIN TRADING FIRM,

Defendants

GLOSSARY

<u>Term</u>	<u>Definition</u>	<u>Docket Entry Number</u>
Plaintiff or Kelly Toys	Kelly Toys Holdings, LLC	N/A
Defendants	<p>Baoding Mi Xiaomei Trading Co., Ltd., Dongguan Gaodenbao Toys Co., Ltd., Dongguan Joy Sum Toys Manufacturing Co., Ltd., Dongguan Mito Technology Co., Ltd., Dongguan Nansen Plush Toys Co., Ltd., Dongguan Qingyu Electronic Technology Co., Ltd., Dongguan Woodfield Baby Products Company Limited, Dongguan Yikang Plush Toys Co., Ltd., Foreigners Store, Foshan Nalu Apparel Co., Ltd., Guangdong Jinyang Children's Products Industrial Co., Ltd., Guangzhou Epsilon Import And Export Co., Ltd., Guangzhou Happy Island Toys Co., Ltd., High Hope International Group Jiangsu Champion Holdings Ltd., Hunan Uyeah International Trade Co., Ltd., Jinhua Hairong Import And Export Co., Ltd., Lianyungang Hongwen Toys Co., Ltd., Long Way Wooden Toys & Crafts Co., Ltd., Nanjing Unico International Trade Co., Ltd., Nanning Huahang Yigou E-Commerce Co., Ltd., Nantong Opera Imp. & Exp. Co., Ltd., Ningbo Yima Import And Export Co., Ltd., Peaceful (guangzhou) Import And Export Co., Ltd., Qingdao Aoding Industry And Trade Co., Ltd., Qingdao Hongwuyue Industry And Trade Co., Ltd., Qingdao Qunze Toys Co., Ltd., Quanzhou Guanghe Mingliang Trading Co., Ltd., Quanzhou Huaerfeiya Electronic Commerce Co., Ltd., Salvatore Store, Shandong Peach Town Toys & Gifts Co., Ltd., Shanghai Kedi Toys Co., Ltd., Shanghai Nova Industrial Co., Ltd., Shanghai Qianjiu Trading Co., Ltd., Shenzhen Huashunchang Toys Co., Ltd., Shenzhen Levin Plush Toys Co., Ltd., Shenzhen Mina Technology Co., Ltd., Shijiazhuang Qunze Trading Co., Ltd., Suzhou Mygreen Textiles Co., Ltd., The road to happiness Store, Toy Encyclopedia Store, Vanci Store, Yancheng Lanyi International Trading Co., Ltd., Yancheng Trust Toys Co., Ltd., Yangzhou Caisheng Handicraft Product Co., Ltd., YANGZHOU DIXIN TOY Store, Yangzhou Haitong Textile Products Co., Ltd., Yangzhou Hobby Import & Export Co., Ltd., Yangzhou Jijia Toys Co., Ltd., Yangzhou Lerddy Toys & Gifts Co., Ltd., Yangzhou Marisa Toy Gifts Co., Ltd., Yangzhou Rongjiang Liangpin Toy Co., Ltd.,</p>	N/A

	Yangzhou Tay Chain Import & Export Co., Ltd, Yangzhou Yijiang Product Trading Co., Ltd., Yangzhou Youpu Household Products Co., Ltd., Yangzhou Yuanjia Crafts Co., Ltd., Yangzhou Yurui Household Products Co., Ltd., Yiwu Galore Accessories Co., Ltd., Yiwu Jianyu E-Commerce Firm, Yiwu Jinbiao Textile Co., Ltd., Yiwu Lenora Trading Co., Ltd., Yiwu Niuluo Trade Firm, Yiwu Quanfa Import & Export Company Limited, Yiwu Yizhou Trading Co., Ltd. and Yiwu Zhengzhi Qin Trading Firm	
Defaulting Defendants	Baoding Mi Xiaomei Trading Co., Ltd., Dongguan Gaodenbao Toys Co., Ltd., Dongguan Joy Sum Toys Manufacturing Co., Ltd., Dongguan Mito Technology Co., Ltd., Dongguan Nansen Plush Toys Co., Ltd., Dongguan Qingyu Electronic Technology Co., Ltd., Dongguan Woodfield Baby Products Company Limited, Dongguan Yikang Plush Toys Co., Ltd., Foreigners Store, Foshan Nalu Apparel Co., Ltd., Guangzhou Epsilon Import And Export Co., Ltd., Guangzhou Happy Island Toys Co., Ltd., Hunan Uyeah International Trade Co., Ltd., Jinhua Hairong Import And Export Co., Ltd., Long Way Wooden Toys & Crafts Co., Ltd., Nanjing Unico International Trade Co., Ltd., Nantong Opera Imp.& Exp. Co., Ltd., Ningbo Yima Import And Export Co., Ltd., Peaceful (guangzhou) Import And Export Co., Ltd., Qingdao Hongwuyue Industry And Trade Co., Ltd. , Qingdao Qunze Toys Co., Ltd., Quanzhou Guanghe Mingliang Trading Co., Ltd., Quanzhou Huaerfeiya Electronic Commerce Co., Ltd., Salvatore Store, Shandong Peach Town Toys & Gifts Co., Ltd., Shanghai Kedi Toys Co., Ltd., Shanghai Nova Industrial Co., Ltd., Shenzhen Mina Technology Co., Ltd., Shijiazhuang Qunze Traning Co., Ltd., Suzhou Mygreen Textiles Co., Ltd., The road to happiness Store, Toy Encyclopedia Store, Vanci Store, Yancheng Lanyi International Trading Co., Ltd., Yangzhou Caisheng Handicraft Product Co., Ltd., YANGZHOU DIXIN TOY Store, Yangzhou Haitong Textile Products Co., Ltd., Yangzhou Hobby Import & Export Co., Ltd., Yangzhou Jijia Toys Co., Ltd., Yangzhou Lerddy Toys & Gifts Co., Ltd., Yangzhou Marisa Toy Gifts Co., Ltd., Yangzhou Rongjiang Liangpin Toy Co., Ltd., Yangzhou Tay Chain Import & Export Co., Ltd, Yangzhou Yijiang Product Trading Co., Ltd., Yangzhou Youpu Household Products Co., Ltd., Yangzhou Yurui Household Products Co., Ltd.,	N/A

	Yiwu Galore Accessories Co., Ltd., Yiwu Jianyu E-Commerce Firm, Yiwu Jinbiao Textile Co., Ltd., Yiwu Lenora Trading Co., Ltd., Yiwu Niuluo Trade Firm, Yiwu Quanfa Import & Export Company Limited and Yiwu Yizhou Trading Co., Ltd.	
Alibaba	Alibaba.com, an online marketplace platform that allows manufacturers, wholesalers and other third-party merchants, like Defendants, to advertise, offer for sale, sell, distribute and ship their wholesale and retail products originating from China directly to consumers across the world and specifically to consumers residing in the U.S., including New York	N/A
AliExpress	Aliexpress.com, an online marketplace platform that allows manufacturers, wholesalers and other third-party merchants, like Defendants, to advertise, offer for sale, sell, distribute and ship their wholesale and retail products originating from China directly to consumers across the world and specifically to consumers residing in the U.S., including New York	N/A
Sealing Order	Order to Seal File entered on July 7, 2021	Dkt. 1
Complaint	Plaintiff's Complaint filed on July 14, 2021	Dkt. 5
Application	Plaintiff's <i>Ex Parte</i> Application for: 1) a temporary restraining order; 2) an order restraining Merchant Storefronts (as defined <i>infra</i>) and Defendants' Assets (as defined <i>infra</i>) with the Financial Institutions (as defined <i>infra</i>); 3) an order to show cause why a preliminary injunction should not issue; 4) an order authorizing bifurcated and alternative service and 5) an order authorizing expedited discovery filed on July 14, 2021	Dkts. 10-12
Kelly Dec.	Declaration of Jonathan Kelly in Support of Plaintiff's Application	N/A
Futterman Dec.	Declaration of Danielle S. Futterman in Support of Plaintiff's Application	Dkt. 12
TRO	1) Temporary Restraining Order; 2) Order Restraining Merchant Storefronts and Defendants' Assets with the Financial Institutions; 3) Order to Show Cause Why a Preliminary Injunction Should Not Issue; 4) Order Authorizing Bifurcated and Alternative Service; and 5) Order Authorizing Expedited Discovery entered on July 14, 2021	N/A
PI Show Cause Hearing	August 5, 2021 hearing to show cause why a preliminary injunction should not issue	N/A
PI Order	August 5, 2021 Preliminary Injunction Order	Dkt. 19

User Account(s)	Any and all websites and any and all accounts with online marketplace platforms such as Alibaba and AliExpress, as well as any and all as yet undiscovered accounts with additional online marketplace platforms held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them	N/A
Merchant Storefronts	Any and all User Accounts through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them operate storefronts to manufacture, import, export, advertise, market, promote, distribute, display, offer for sale, sell and/or otherwise deal in Counterfeit Products, which are held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them	N/A
Squishmallows Registrations	U.S. Trademark Registration Nos.: 5,454,574 for “SQUISHMALLOW” for goods in Class 28; 6,137,521 for “FLIP A MALLOWS” for goods in Class 28; 5,962,289 for “MYSTERY SQUAD” for goods in Class 28; and 2,029,047 for “KELLYTOY” for goods in Class 28	N/A
Squishmallows Applications	U.S. Trademark Serial Application Nos.: 88/471,796 for “SQUISHMALLOWS HUGMEES” for goods in Class 28 and 90/676,140 for “ORIGINAL SQUISHMALLOWS,” for goods in Class 28	N/A
Squishmallows Marks	The marks covered by the Squishmallows Registrations and Squishmallows Applications	N/A
Squishmallows Works	The works covered by the U.S. copyright registrations listed in Exhibit C to the Complaint	N/A
Squishmallows Products	A line of loveable buddies made with a super soft, marshmallow-like texture that come in a variety of sizes from 3.5-inch clip-ons to extra-large 24 inch plush toys, and have expanded to other styles including Hug Mees, Stackables, Mystery Squad and Flip-A-Mallows	N/A
Counterfeit Products	Products bearing or used in connection with the Squishmallows Marks and/or Squishmallows Works, and/or products in packaging and/or containing labels and/or hang tags bearing the Squishmallows Marks and/or Squishmallows Works, and/or bearing or used in connection with marks and/or artwork that are confusingly or substantially similar to the Squishmallows Marks and/or Squishmallows Works	N/A

	and/or products that are identical or confusingly or substantially similar to the Squishmallows Products	
Defendants' Assets	Any and all money, securities or other property or assets of Defendants (whether said assets are located in the U.S. or abroad)	N/A
Defendants' Financial Accounts	Any and all financial accounts associated with or utilized by any Defendants or any Defendants' User Accounts or Merchant Storefront(s) (whether said account is located in the U.S. or abroad)	N/A
Financial Institutions	Any banks, financial institutions, credit card companies and payment processing agencies, such as PayPal Inc. ("PayPal"), Payoneer Inc. ("Payoneer"), the Alibaba Group d/b/a Alibaba.com payment services (e.g., Alipay.com Co., Ltd., Ant Financial Services Group), PingPong Global Solutions, Inc. ("PingPong") and other companies or agencies that engage in the processing or transfer of money and/or real or personal property of Defendants	N/A
Third Party Service Providers	Online marketplace platforms, including, without limitation, those owned and operated, directly or indirectly by Alibaba and/or AliExpress, as well as any and all as yet undiscovered online marketplace platforms and/or entities through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them manufacture, import, export, advertise, market, promote, distribute, offer for sale, sell and/or otherwise deal in Counterfeit Products which are hereinafter identified as a result of any order entered in this action, or otherwise	N/A
Plaintiff's Motion for Default Judgment	Plaintiff's Motion for Default Judgment and a Permanent Injunction Against Defaulting Defendants filed on October 11, 2021	TBD
Futterman Aff.	Affidavit by Danielle S. Futterman in Support of Plaintiff's Motion for Default Judgment	TBD

Defendants' Frozen Accounts = Defendants' Financial Accounts that were and/or are attached and frozen or restrained by the Financial Institutions pursuant to the TRO and/or PI Order, or which are attached and frozen or restrained pursuant to any future order entered by the Court in this action.

This matter comes before the Court by motion filed by Plaintiff for the entry of final judgment and permanent injunction by default against Defaulting Defendants for Defaulting Defendants' trademark infringement, trademark counterfeiting, copyright infringement, false designation of origin, passing off and unfair competition and related state and common law claims arising out of Defaulting Defendants' unauthorized use of Plaintiff's Squishmallows Marks and/or Squishmallows Works without limitation, in their manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying or offering for sale and/or selling and/or sale of Counterfeit Products.¹

The Court, having considered the Memorandum of Law and Affidavit of Danielle S. Futterman in support of Plaintiff's Motion for Default Judgment and a Permanent Injunction Against Defaulting Defendant, the Certificates of Service of the Summons and Complaint, the Certificate of the Clerk of the Court stating that no answer has been filed in the instant action, and upon all other pleadings and papers on file in this action, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. Defaulting Defendants' Liability

- 1) Judgment is granted in favor of Plaintiff on all claims properly pled against Defaulting Defendants in the Complaint;

II. Damages Awards

An order addressing damages will issue separately.

- 1) ~~IT IS FURTHER ORDERED, ADJUDGED AND DECREED that because it would serve both the compensatory and punitive purposes of the Lanham Act's prohibitions on willful infringement, and because Plaintiff has sufficiently set forth the basis for the statutory damages award requested in its Motion for Default Judgment, the Court finds such an award to be~~

¹ Where a defined term is referenced herein and not defined herein, the defined term should be understood as it is defined in the Glossary.

~~reasonable and Plaintiff is awarded statutory damages in the amount of \$50,000.00 (“Defaulting Defendants’ Individual Damages Award”) against each of the fifty-three (53) Defaulting Defendants pursuant to Section 15 U.S.C. § 1117(c) of the Lanham Act, plus post judgment interest, for a total of Two Million Six Hundred Fifty Thousand Dollars (\$2,650,000.00);~~

III. Permanent Injunction

- 1) IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Defaulting Defendant, its respective officers, agents, servants, employees, and all persons acting in concert with or under the direction of Defaulting Defendants (regardless of whether located in the United States or abroad), who receive actual notice of this Order are permanently enjoined and restrained from:
 - A. manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in Counterfeit Products or any other products bearing the Squishmallows Marks and/or Squishmallows Works and/or marks and/or artwork that are confusingly or substantially similar to, identical to and constitute a counterfeiting and/or infringement of the Squishmallows Marks and/or Squishmallows Works;
 - B. directly or indirectly infringing in any manner Plaintiff’s Squishmallows Marks and/or Squishmallows Works;
 - C. using any reproduction, counterfeit, copy or colorable imitation of Plaintiff’s Squishmallows Marks and/or Squishmallows Works to identify any goods or services not authorized by Plaintiff;
 - D. using Plaintiff’s Squishmallows Marks and/or Squishmallows Works, or any other marks and/or artwork that are confusingly or substantially similar to the Squishmallows

- Marks and/or Squishmallows Works on or in connection with the manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in the Counterfeit Products;
- E. secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with: (i) Counterfeit Products; (ii) any computer files, data, business records, documents or any other records or evidence relating to:
- i. Defaulting Defendants' User Accounts and/or Merchant Storefronts;
 - ii. Defaulting Defendants' Assets; and
 - iii. the manufacture, importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products by Defaulting Defendants and by their respective officers, employees, agents, servants and all persons in active concert or participation with any of them; and
- F. effecting assignments or transfers, forming new entities or associations, or creating and/or utilizing any other platform, User Accounts, Merchant Storefronts or any other means of importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products for the purposes of circumventing or otherwise avoiding the prohibitions set forth in this Order.
- 2) IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defaulting Defendants must deliver up for destruction to Plaintiff any and all Counterfeit Products and any and all packaging, labels, tags, advertising and promotional materials and any other materials in the possession, custody or control of Defaulting Defendants that infringe any of Plaintiff's trademarks, copyrights or other rights including, without limitation, the Squishmallows Marks and/or Squishmallows Works, or bear any marks and/or artwork that are confusingly or

substantially similar to the Squishmallows Marks and/or Squishmallows Works pursuant to 15 U.S.C. § 1118;

3) IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Third Party Service Providers and Financial Institutions are permanently enjoined and restrained from:

- A. secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with any computer files, data, business records, documents ~~Defaulting Defendants' Frozen Assets~~ or any other records or evidence relating to ~~Defaulting Defendants' Assets~~ from or to Defaulting Defendants' Financial Accounts; and
- B. knowingly instructing, aiding or abetting any other person or business entity in engaging in any of the activities referred to in subparagraphs III(1)(A) through III(C)(1) above.

IV. Dissolution of Rule 62(a) Stay

1) IT IS FURTHER ORDERED, as sufficient cause has been shown, the 30 day automatic stay on enforcing Plaintiff's judgment, pursuant to Fed. R. Civ. Pro. 62(a) is hereby dissolved.

V. Miscellaneous Relief

- 1) Defaulting Defendants may, upon proper showing and two (2) business days written notice to the Court and Plaintiff's counsel, appear and move for dissolution or modification of the provisions of this Order concerning the restriction or restraint of Defaulting Defendants' Frozen Assets, Defaulting Defendants' Additional Assets and/or Defaulting Defendants' Additional Financial Accounts;
- 2) Any failure by Defaulting Defendants to comply with the terms of this Order shall be deemed contempt of Court, subjecting Defaulting Defendants to contempt remedies to be determined by the Court, including fines and seizure of property;

- 3) The Court releases the Fifteen Thousand U.S. Dollar (\$15,000.00) security bond that Plaintiff submitted in connection with this action to counsel for Plaintiff, Epstein Drangel, LLP, 60 East 42nd Street, Suite 2520, New York, NY 10165; and
- 4) This Court shall retain jurisdiction over this matter and the parties in order to construe and enforce this Order.

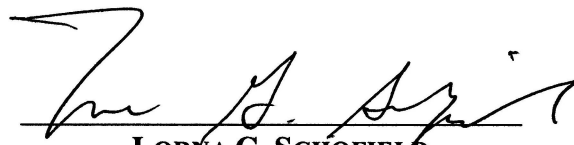
SO ORDERED.

SIGNED this ____ day of _____, 2021, at _____.m.

Any future request to serve restraining notices on Third Party Service Providers and/or Financial Institutions shall specifically identify the target entities and address personal jurisdiction and notice and hearing requirements.

SO ORDERED.

Dated: December 3, 2021
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE